

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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KEVIN D. FISHER, a natural person,

Plaintiff,

v.

INDEX NO. 07-CIV-9239 (SCR)

CHRISTOPHER RADKO, a natural person,

RAUCH CORPORATION

a North Carolina Corporation,

Defendants.

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**ANSWER AND AFFIRMATIVE DEFENSES OF CHRISTOPHER RADKO**

Defendant, Christopher Radko, answers the Complaint of Kevin Fisher, and states:

**JURISDICTION AND VENUE**

1. Admitted only that Plaintiff claims copyright infringement and unjust enrichment, but denied that Radko is liable for same.
2. Admitted.
3. Admitted only that venue is proper in this District.

**THE PARTIES**

4. Without knowledge and therefore denied.
5. Admitted only that Radko has designed Christmas tree and other blown glass ornaments and that he lives in Tarrytown, New York. Without knowledge as to the nature and meaning of Plaintiff's allegation that Radko "associated with Rauch Corporation," and therefore denied. Denied as to all remaining allegations.

6. Admitted only that Rauch is a North Carolina corporation with its principal place of business in Gastonia, N.C., which designs, manufactures, distributes and sells Christmas ornaments. Denied as to all remaining allegations, including Plaintiff's allegation that Rauch's ornaments are approved by Radko.

#### **GENERAL STATEMENT OF FACTS**

- 7. Radko repeats and reasserts its defenses to paragraphs 1-6 above.
- 8. Without knowledge and therefore denied.
- 9. Without knowledge and therefore denied.
- 10. Without knowledge and therefore denied.
- 11. Admitted only as to Radko. Without knowledge as to Rauch.
- 12. Denied. Specifically denied that Radko ever held a competition or that Radko is aware of Plaintiff.
- 13. Without knowledge concerning the alleged "public exhibition," and therefore denied as to all allegations.
- 14. Denied.

#### **COUNT ONE: COPYRIGHT INFRINGEMENT (as to Christopher Radko)**

- 15. Radko repeats and reasserts his defenses to paragraphs 1-14 above.
- 16. Without knowledge and therefore denied.
- 17. Denied.
- 18. Denied.

**COUNT TWO:  
COPYRIGHT INFRINGEMENT  
(as to Christopher Radko)**

- 19. Radko repeats and reasserts his defenses to paragraphs 1-18 above.
- 20. Without knowledge and therefore denied.
- 21. Denied.
- 22. Denied.

**COUNT THREE:  
COPYRIGHT INFRINGEMENT  
(as to Rauch Corporation)**

23-26. This Count is not directed to Radko. In an abundance of caution, Radko denies these allegations.

**COUNT FOUR:  
COPYRIGHT INFRINGEMENT  
(as to Rauch Corporation)**

27-30. This Count is not directed to Radko. In an abundance of caution, Radko denies these allegations.

**COUNT FIVE:  
UNJUST ENRICHMENT**

31-36. Radko files, concurrently herewith, a Motion to Dismiss Count Five based on copyright preemption.

WHEREFORE, Defendant, Christopher Radko, requests that the Court deny all of Plaintiff's prayers for relief and enter judgment in Radko's favor as to all Counts directed toward him. Radko also requests that the Court award him his attorneys' fees pursuant to 17 U.S.C. § 505.

**AFFIRMATIVE DEFENSES**

1. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches, estoppel and/or waiver.
2. Defendants are not liable because their use, if any, of the copyrighted works are considered fair use.
3. Plaintiff's claim for unjust enrichment under Count Five fails to state a claim because it is barred by copyright preemption.
4. Plaintiff's copyrights and copyright registrations are invalid and unenforceable.
5. The allegedly infringing works were independently created by Defendants.
6. The allegedly infringing works are not substantially similar to any of Plaintiff's works.
7. One or more of the Defendants are the rightful owners of the copyrights in and to Plaintiff's works, and thus Plaintiff's registrations are invalid.

Dated: February 19, 2008

**/s/ Judith H. Weil**

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Judge Robinson

CHRISTOPHER RADKO, a natural person,

**CERTIFICATE OF SERVICE**

RAUCH CORPORATION

a North Carolina Corporation,

Defendants.

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I hereby certify that on February 19, 2008, I electronically filed the foregoing document with the Clerk of the Court using ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by ECF or in some other authorized manner for those counsel of parties who are not authorized to receive electronically Notices of Electronic Filing.

**/s/ Judith H. Weil**

Judith H. Weil

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**SERVICE LIST**

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